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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,993	02/10/2004	Raymond Smith	006961.P001	5861

7590 11/13/2007  
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EXAMINER
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LEFF, STEVEN N

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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11/13/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/776,993		SMITH, RAYMOND	
	<b>Examiner</b>		<b>Art Unit</b>	
	Steven Leff		1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 August 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5, 6, 9-11, 13, 23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 9-11, 13, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 August 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

- Applicant's addition to the specification has been considered and entered as it is not deemed new matter since the feature was present in figure 10 previously, just not named.

### ***Drawings***

- The drawing filed on 8/15/07 have been accepted been considered and entered as it is not deemed new matter since the feature was present in figure 10 previously, just not named.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- Claims 2, 6 and 24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The application does not appear to disclose the subject matter of claims 2, 6, and 24.
- Claim 24 is further rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. With respect to claim 24, the specification does not teach that the upper supporting surface does not include an outer, peripheral upstanding wall.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - The recitation of a selection from a group of elements in a claim should comply with accepted U.S. Patent practice with regard to the recitation of Markush grouping of claim elements. Phrases using “comprising” are open sets, and should recite elements in the alternative (i.e. “comprising A, B, C or D”), whereas closed sets (“consisting of”) should recite elements as “selected from the group consisting of A, B, C and D.” See claim 9.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gics (5565228) in view of Prigge (4904492).

With respect to claims 1, and 5, Gics teaches a method of cooking a pizza comprising placing a pizza in an oven (col. 1 line 10+) with at least the central region of the pizza resting upon a pizza supporting device having an upper supporting surface such that the central portion of the pizza is raised above the level of the peripheral region of the pizza during cooking by means of the upper supporting surface (fig. 8, col. 2 line 57+, col. 4 line 16+) where during cooking of the pizza the central portion of the pizza is

supported above the level of the peripheral region of the pizza during cooking by the upper supporting surface (col. 4 line 16+).

However Gics is silent with respect to cooking in specifically a convection oven, and specifically supporting between 25% to 75% of the cooking portion of the diameter of the pizza which is to be cooked, and more specifically between 40% and 60% of the diameter of the pizza to be cooked.

Prigge teaches heating pizza using an elevated platform (abstract). More specifically, Prigge teaches cooking a pizza in a conventional convection oven (abstract).

Therefore although Gics does not teach cooking in specifically a convection oven, Gics does teach that the tray can be placed directly into a conventional oven or microwave oven (col. 1 line 7+), and where Prigge teaches a platform which can be used in conventional convection heating ovens, (col. 1 line 14+) one of ordinary skill in the art would have been motivated to combine the teaching of Gics and Prigge and teach that the cooking is in specifically a convection oven since Prigge specifically teaches the need in the art for a method which allows a pizza to be cooked in a convection oven since convections ovens are more readily available in the kitchens of restaurants, where previously a specific "pizza oven" was required in order to provide a non-soggy crust (col. 1 line 59+) .

Therefore it would have been obvious to one of ordinary skill in the art to teach at the time of the invention by the applicant to teach cooking a pizza in a conventional convection oven, since Gics specifically teach this pizza cooking method , (col. 1 line 10+) for producing a non-soggy pizza (col.4 line 15), since the idea of using a raised platform is present (fig. 8, col. 2 line 57+, col. 4 line 16+), and since Prigge specifically teaches the desire and method of cooking a pizza in a convection oven thereby producing a non-soggy pizza in a convection oven as opposed to in a pizza specific oven thus increasing the overall number of functions of the convections oven thereby allowing a non-soggy, tasteful pizza to be produced which increases overall profits of the restaurant since more than one food can be heated, to more than one temperature and thus more than one final product can be produced in a single oven where the food is of a desirable quality to the consumer (col.1 line 61+).

With respect to claims 1, and specifically the limitation "the central region of the pizza is raised above the level of the peripheral region of the pizza during cooking by

means of the upper supporting surface”, it is noted that Gics teaches a method of cooking a frozen pizza. Therefore, at the beginning of the cooking cycle the pizza will be solid, i.e. frozen, thus in a generally linear shape. During the cooking cycle, as the pizza dough becomes pliable, the periphery of the pizza would inherently lower, or sag, with respect to the center of the pizza due to only central portion being supported and not the periphery as is depicted by figure 8. In addition, Gics teaches a collection reservoir for collecting toppings which may “cascade over the sides of the pizza”, where the cascaded cheese depicted in figure 8, is interpreted by the examiner to be the periphery of the pizza in this instance. Therefore Gics positively teaches, with respect to both interpretations of the claim, at figure 8 and at column 4, line 17+ “the central portion of the pizza is raised above the level of the peripheral region of the pizza during cooking by the upper supporting surface”.

With respect to the limitation specifically supporting between 25% to 75% of the cooking portion of the diameter of the pizza which is to be cooked, although Gics does not specifically teach these percentages, Gics does positively teach the desire of providing a supporting surface which is smaller than the overall size of the pizza which is to be cooked (fig. 8, col. 8 line 17+), where it is noted that in the instance that the device remains constant in size, and the size of the pizza is changed, or alternatively where the pizza size is constant, and where the size of the upper supporting surface is changed, the upper supporting surface is between 25% and 75% and more specifically between 40% and 60% of the diameter of the pizza to be cooked since the amount of pizza which is supported is dependant upon the size of the pizza, with respect to the size of the support surface since it is known that pizza come in different sizes.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to teach a specific degree of upper supporting since the amount of the pizza, which is supported, is relative to the size of the central supporting region with respect to the size of the pizza where design incentives or market forces with respect to the desired size of pizza, provides a reason to make an adaptation, where the recitation of a specific amount of pizza which is supported is a result of application of the prior art in a predictable manner. It would have further been obvious since the mere scaling up or down of a prior art process capable of being scaled up, or

down, if such were the case, would not establish patentability in a claim to an old process so scaled.” (see MPEP 2144.04 IV (A)).

- Claims 2, 3, 6, 9-11, 13, and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gics (5565228) in view of Prigge (4904492) and in further view of Young (5585027).

With respect to claim 2, Gics teaches a device comprising an upper supporting surface for supporting at least a central region of a pizza such that the central region is supported above the level of the pizza during cooking (fig. 8, col. 2 line 57+, col. 4 line 16+). More specifically Gics teaches that the upper supporting surface is provided by a main dome-shaped portion (fig. 8 ref. #27) having at least one, central aperture therein to permit steam and moisture to escape from the central region of the pizza (col. 2 line 54+), where the dome-shaped portion has a first inclination (fig. 8 ref. #27), and an outer portion have a second inclination (col. 3 line 61+), where the first inclination is less than the second inclination (fig. 8).

However Gics is silent with respect to the outer portion having a peripheral rim or an outwardly and horizontally extending peripheral flange which extends from the lowermost portion of the outer portion.

Prigge teaches heating pizza using an elevated platform (abstract). More specifically, Prigge teaches a platform which can be used in convection heating ovens, (col. 1 line 14+), where Young teaches a pizza heating support which is dome-shaped (fig. 18) and includes a peripheral rim on the outer portion (fig. 19 ref. #166, col. 8 line 46+).

In addition, although Gics is silent with respect to the outer portion having a peripheral rim and that the outer portion has a peripheral rim or an outwardly and horizontally extending peripheral flange which extends from the lowermost portion of the outer portion, Gics does teach an outer surface which is at an obtuse angle with respect to the supporting surface (fig. 8), where Young does teach a peripheral rim (fig. 19 ref. #166, col. 8 line 46+). With respect to the outer portion having a peripheral rim or an outwardly and horizontally extending peripheral flange which extends from the lowermost portion of the outer portion, it is noted that Young teaches a lip (fig. 19 ref. #166, col. 8 line 46+) where a lip inherently has an outwardly and horizontally extending peripheral area, which is viewed as a flange.

Therefore one of ordinary skill in the art would have been motivated to combine the teaching of Gics, Prigge and Young and teach that the outer portion has a peripheral rim since Gics teaches the general desire of providing a stable platform by angling the side walls outwardly with respect to the supporting surface (fig. 8), and since Young specifically teaches providing a rim where the increased surface area provides additional stability (fig. 19).

Thus it would have been obvious to one of ordinary skill in the art at the time of the invention by applicant to teach a peripheral rim since Gics teaches a structure which provides support using angled walls and since Young teaches a lip (fig. 19 ref. 166) for its art recognized and applicant's intended purpose of increasing the stability of the device due to the increased surface area provided by the peripheral rim taught by Young (fig. 19 ref. #166).

Gics continues by teaching that the upper supporting surface (fig. #8, ref. # 28, col. 2 line 57) comprises a circular raised portion (col. 2 line 54), and an inverted saucer member (fig. 8, ref. #27) having the central aperture lying in a horizontal plane (col. 2 line 54) and a dome-shaped portion defining the outer region of the aperture extending downwardly therefrom (fig. 8 ref. #'s 27 and 28). Further the device is formed from a heat resistant material such as card, metal, ceramic, or a suitable polymeric material (col. 3 line 6), or that the device is formed from aluminum (col. 3 line 15), the device is perforated (col. 2 line 54), where it includes only a single aperture (col. 2 line 54), and that the upper supporting surface does not include an outer, peripheral upstanding wall, where it is noted that the peripheral wall of Gics is not upstanding since it is at an angle with respect to the supporting surface (fig. 8).

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action



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is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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